

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) "small entities," those with revenues of no more than \$15 million in each of the three previous calendar years; and (2) "very small entities," those with revenues of no more than \$3 million in each of the three previous calendar years. The regulations defining "small entity" and "very small entity" in the context of 800 MHz SMR and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes for purposes of this FRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small and very small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small and very small entities.

7. Private Land Mobile Radio Licensees (PLMR)

The Commission has not developed a definition of small entities specifically applicable to PLMR licensees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore, these rules could potentially impact every small business in the United States if PLMR licenses are subject to auction under these new auction rules.

8. Aviation and Marine radio service

Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to a small organization, generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²⁸ Nationwide, there are 275,801 small

²⁸ 5 U.S.C. § 601(4).

organizations.²⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."³⁰ As of 1992, there were 85,006 such jurisdictions in the United States.³¹ The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses under these size standards. Most applicants for individual recreational licenses are individuals.³² Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this FRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

9. Offshore radiotelephone service

This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

10. General Wireless Communication Service

This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660-4685 MHz band from the federal government to private sector use. The Commission has announced that an auction of 875 GWCS licenses will begin on May 27, 1998. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

D. Description of the projected reporting, recordkeeping, and other compliance requirements

All license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for license auctions by filing a short-form application and will file a long-form application at the conclusion of the auction. Additionally, entities seeking treatment as "small businesses" will

²⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6, (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

³⁰ 5 U.S.C. § 601(5).

³¹ U.S. Department of Commerce, Bureau of the Census, "1992 Census of Governments."

³² The Commission no longer requires individual licenses.

need to submit information pertaining to the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant.

E. Steps taken to minimize the economic impact on small entities and significant alternatives considered

Among other goals, Section 309(j) directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.³³ At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.³⁴

The Commission received numerous comments addressing the applicability of general competitive bidding rules for future auctions. Many commenters support general competitive bidding rules, but argue that the Commission should adopt service-specific rules in particular instances, such as a reauction.³⁵ For example, two commenters, AICC and AAA, argue that shared channels should not be auctioned under the general competitive bidding procedures.³⁶ Hughes contends that if satellite services are auctioned, the Commission must conduct a service-specific rulemaking tailored to the nature of the satellite industry.³⁷ The Commission does not address the issue of the auctionability of particular services in this proceeding; however, service-specific auction rules will be adopted in the future where the general competitive bidding rules are inappropriate.

The Commission also received numerous comments with respect to the issue of eliminating installment payments.³⁸ The Commission has reviewed all of the comments in response to the Notice of Proposed Rulemaking in this docket, as well as the comments filed

³³ 47 U.S.C. § 309(j)(3)(B).

³⁴ 47 U.S.C. §§ 309(j)(3)(A), (C).

³⁵ See, e.g., AT&T Comments at 1-2; AICC Reply Comments at 2; Airadigm Reply Comments at 6; NextWave Reply Comments at 2.

³⁶ See AICC Comments at 1-2 and Reply Comments at 2; AAA Comments at 1-2 and Reply Comments at 2.

³⁷ See Hughes Comments at 1, 6.

³⁸ See, e.g., Merlin Comments at 4.

in response to the *Installment Public Notice*,³⁹ and concludes that installment payments should not be offered in auctions as a means of financing small businesses and other designated entities seeking to secure spectrum licenses. In this Order, Commission eliminates installment payments in the auction of the lower 80 and General Category channels in the 800 MHz SMR service. The Commission notes that installment payments are not the only tool available to assist small businesses, and that section 3007 of the Balanced Budget Act requires that the Commission conduct certain future auctions in a manner that ensures that all proceeds from such bidding are deposited in the U.S. Treasury not later than September 30, 2002. The Commission seeks comment in the Further Notice on offering installment payments in the future; however, section 3007 of the Balanced Budget Act may require that these auctions be conducted without offering long-term installment payments.

In assessing the public interest, the Commission must try to ensure that all the objectives of section 309(j) are considered. In this Order, the Commission continues the practice of defining small business standards on a service-specific basis; adopts uniform definitions of "gross revenues" and "affiliate"; eliminates the use of installment payments for the 800 MHz Lower 80 channels and General Category channels services; suspends the use of installment payments for other services to be auctioned in the immediate future; provides for higher bidding credits, in lieu of installment payments, to encourage and facilitate the participation of designated entities in future auctions; and modifies the unjust enrichment rule.

In addition, this Order requires electronic filing of all short-form and long-form applications, beginning January 1, 1999; adopts a uniform definition of major amendments to the short-form; adopts general ownership disclosure requirements; affirms the policy of refunding upfront payments before the end of an auction to bidders that lose eligibility; adopts uniform default rules to all auctionable services; permits auction winners who have submitted a timely down payment to submit final payments 10 business days after the applicable deadline, provided the appropriate late fee is paid; adopts one 90-day non-delinquency period and one automatic 90-day grace period, and a late payment fee, similar to the rules for broadband PCS F block for licensees currently paying under installments; and clarifies that the Commission will not pursue a policy of cross-default, either within or across services, where licensees default on an installment payment.

Finally, this Order delegates authority to the Wireless Telecommunications Bureau to seek comment on specific mechanisms relating to auction conduct; allows for real-time bidding in simultaneous multiple-round auctions; provides that the Bureau will seek comment on and specify a minimum opening bid and/or reserve price in future auctions; adopts, for all auctionable services, the broadband PCS rules for bid withdrawal payments in the event of erroneous bids; modifies the attributable investor threshold of the anti-collusion rule to include controlling interests and/or holders of a 10 percent or greater interest in the applicant

³⁹ "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," *Public Notice*, DA 97-82, rel. June 2, 1997 (*Installment Public Notice*).

and to permit an entity that has invested in an applicant that withdraws from an auction to invest in other applicants that have applied to bid in the same markets; and permits all auction winners to begin construction at their own risk upon issuance of a public notice announcing the auction winners.

The Commission believes that the objectives of section 309(j) are met by the rule changes in this Order. In addition, this Order serves the public interest by simplifying regulations, eliminating unnecessary rules, increasing the efficiency of the competitive bidding process, and providing more specific guidance to auction participants while also giving them more flexibility.

F. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the Order and this FRFA (or a summary thereof) will be published in the Federal Register. *See* 5 U.S.C. § 604(b). A copy of the Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX C**Initial Regulatory Flexibility Analysis**
(Second Further Notice of Proposed Rulemaking)

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the Second Further Notice of Proposed Rulemaking (Notice) in WT Docket No. 97-82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and objectives of, the proposed rules

This Notice is being initiated to secure comment on additional issues relating to the general competitive bidding rules for all auctionable services that are necessary in light of the Balanced Budget Act of 1997.² This Notice seeks comment on the use of installment payments for future auctions, the controlling interest standard as a general attribution rule, the appropriate petition to deny period for future auctions, and whether the Part 1 rules adopted in the Third Report and Order (Order) should apply to the auction of General Wireless Communications Services (GWCS) and supersede the previously adopted GWCS auction rules and procedures. The Commission believes that these proposals will further simplify and streamline the rules and regulations and increase the overall efficiency of the competitive bidding process.

B. Legal basis

This action is taken pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309 (j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

C. Description and estimate of the number of small entities to which the proposed rules will apply

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Balanced Budget Act of 1997, Pub. Law 105-33, 111 Stat. 251 (1997) (to be codified at 47 U.S.C. § 309(j)(4)(F)).

The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.⁵ Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁶

The rules proposed in this Notice would allow all entities, including existing cellular, PCS, paging, and other small communications entities to obtain licenses in auctionable services through competitive bidding. These rules apply to future auctions, but will not apply to the initial auctions of licenses in the paging, 220 MHz, 800 MHz Specialized Mobile Radio (SMR), and Local Multipoint Distribution (LMDS) services. In estimating the number of small entities who may participate in future auctions of wireless services, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

As noted in the FRFA, *supra*, various wireless small entities may be affected by the rules in the Order. These same entities are included in this IRFA. Also, as noted, with a few exceptions, the Commission has not developed a precise definition of small entities for the various affected wireless services. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁷ The Commission hereby incorporates into this IRFA section the FRFA analysis and descriptions of potentially affected small entities, *supra*, regarding the cellular, narrowband PCS, 220 MHz, paging, air-ground, SMR, PLMR, aviation and marine, offshore radiotelephone services, and GWCS.⁸ In addition, we incorporate the more refined definitions described *supra* pertaining to the broadband PCS,

³ 5 U.S.C. §§ 603(b)(3).

⁴ 5 U.S.C. § 601(6).

⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

⁶ 15 U.S.C. § 632.

⁷ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁸ See Appendix B at section C, *supra*.

220 MHz, paging, and SMR services.⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁰ Nationwide, there are 275,801 small organizations.¹¹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹² As of 1992, there were 85,006 such jurisdictions in the United States.¹³

D. Description of reporting, recordkeeping, and other compliance requirements

There are no additional reporting, recordkeeping, or other compliance requirements as a result of the Notice.

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered

The Commission proposes, pursuant to the Balanced Budget Act of 1997, to use competitive bidding for the award of any initial licenses or construction permits, unless excepted under Section 309(j)(2), when mutual exclusivity exists among applications that have been accepted for filing. The Commission proposes to employ various mechanisms such as eligibility restrictions, spectrum caps, size limits on service areas, and providing for partitioning of service areas and disaggregation of spectrum in order to provide opportunities for avoiding mutually exclusive license applications. These different mechanisms are intended to help ensure that the marketplace for the various services continue to promote economic opportunity, provide incentives for the development and rapid deployment of new technologies, and to achieve efficient and intensive use of this spectrum.

The Commission observes that small businesses have been successful in the auctions in which installment payments plans were offered, and seeks comment on ways to provide an effective installment payment program while at the same time minimizing the concerns that have led to the decision to discontinue the use of installment payments for the present time. The Commission seeks comment on how to create an installment payment plan which fulfills the sometimes incongruent goals of encouraging only serious, financially qualified small business applicants to apply for licenses, ensuring the rapid provision of service to the

⁹ *Id.*

¹⁰ 5 U.S.C. § 601(4).

¹¹ 1992 Economic Census, U.S. Bureau of the Census, Table 6, (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹² 5 U.S.C. § 601(5).

¹³ U.S. Department of Commerce, Bureau of the Census, "1992 Census of Governments."

public, and guaranteeing that the American public is reasonably compensated for the use of the spectrum being auctioned. The Commission also seeks comment on how to fashion an installment payment program that is consistent with the provision of the Balanced Budget Act of 1997 that requires that all proceeds from future competitive bidding be deposited in the United States Treasury not later than September 30, 2002. In addition, the Commission seeks comment on means other than bidding credits and installment payments to facilitate the participation of small businesses and other designated entities in the spectrum auction program.

With respect to general attribution rules, the Commission proposes to adopt a "controlling interest" standard as the general attribution rule for all future auctions. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both "de jure" and "de facto" control, and their affiliates. The Commission seeks comment on whether the standard is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits, or whether alternate standards for attributing the gross revenues of investors and affiliates in an applicant would better meet the Commission's goal to facilitate the participation of small businesses and other designated entities in the spectrum auction program. In addition, the Commission seeks comment on whether the controlling interest standard would be strengthened by imposing a minimum equity requirement.

The Commission believes that the provision in the Balanced Budget Act of 1997 requiring that interested parties have adequate time to develop business plans, assess market conditions and evaluate the availability of equipment necessary to make use of the specific spectrum to be auctioned is primarily intended to ensure that interested parties have adequate time to familiarize themselves with the rules and procedures to be employed in an auction prior to the application deadlines and start date of that auction. Nevertheless, it is unclear whether this legislation requires an additional opportunity for notice and comment prior to the issuance of detailed auction-specific information by the Wireless Telecommunications Bureau (Bureau). In order to comply with this provision of the Balanced Budget Act of 1997, and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of the auction, the Commission proposes to delegate to the Bureau the authority to seek comment on a variety of auction-specific issues prior to the start of each auction.

The Commission proposes that the Bureau seek comment on specific mechanisms relating to day-to-day bidding, the round structure, minimum opening bid/reserve prices, minimum acceptable bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, the stopping rules to be employed, and information relating to auction delay, suspension, or cancellation. The Commission also proposes that the Bureau afford interested parties a reasonable time (*e.g.*, seven days), in light of the start date of each auction and relevant pre-auction filing deadlines, to comment on these auction-specific issues. Also, the Commission proposes that the Bureau announce,

at any time in the weeks leading up to the start date of each auction, any amendment or clarifications to the information contained in the auction-related public notices or the Bidder Information Package.

The Commission tentatively concludes that the Balanced Budget Act of 1997 establishes a presumption that a reserve price or minimum opening bid will be required for each auction, unless it is determined that such mechanisms are not in the public interest. Comment is sought on this conclusion. The Commission tentatively concludes that the new provision establishing reserve prices or a minimum opening bid does not call for traditional reserve prices; rather, it calls for an added protection that licenses will not be assigned at unacceptably low prices. The Commission also seeks comment on suggested methods by which a reserve price or minimum bid can be established in future auctions, in light of the tentative conclusion above.

The Commission believes that in light of Congress' directive in the Balanced Budget Act, a shortened time period for the grant of initial licenses in auctionable services, as well as a shortened petition to deny period, is generally appropriate for future auctions. The Commission seeks comment on the appropriate length of a petition to deny period in light of this legislation, and in particular, whether auctions for specific services require longer periods for the grant of initial licenses or for the filing of petitions to deny.

Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.¹⁴ Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.¹⁵ The Commission believes these provisions in the Notice help meet those goals and promote efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

F. Federal rules which overlap, duplicate, or conflict with these rules

None.

¹⁴ 47 U.S.C. § 309(j)(3)(B).

¹⁵ 47 U.S.C. §§ 309(j)(3)(A), (C).

APPENDIX D
Final Rules

Parts 1, 21, 24, 27, 90 and 95 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j), unless otherwise noted.

2. Section 1.2101 is revised to read as follows:

§ 1.2101 Purpose.

The provisions of this subpart implement Section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) and the Balanced Budget Act of 1997 (Public Law 105-33), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

3. Section 1.2102 is amended by revising paragraphs (a) and (b) to read as follows:
§ 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications are subject to competitive bidding.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Public safety radio services, including private internal radio services used by state and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that

(i) Are used to protect the safety of life, health, or property; and

(ii) Are not commercially available to the public;

(2) Initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(3) Noncommercial educational and public broadcast stations described under 47 U.S.C. § 397(6).

Note to § 1.2102: To determine the rules that apply to competitive bidding, specific service rules should also be consulted.

4. Section 1.2103 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 1.2103 Competitive bidding design options.

(a) The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

- (1) Simultaneous multiple-round auctions (using remote or on-site electronic bidding);
- (2) Sequential multiple round auctions (using either oral ascending or remote and/or on-site electronic bidding);
- (3) Sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); and
- (4) Combinatorial (package/contingent) bidding auctions.

(d) The Commission may use real time bidding in all electronic auction designs.

3. Section 1.2104 is amended by revising paragraphs (d) and (g) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(d) Minimum Bid Increments, Minimum Opening Bids and Maximum Bid Increments.

The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission also may establish minimum opening bids and maximum bid increments on a service-specific basis.

* * * * *

(g) Withdrawal, Default and Disqualification Payment. As specified below, when the Commission conducts an auction pursuant to § 1.2103, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction is subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. The bid

withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(1) plus an additional payment equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. If either bid amount is subject to a bidding credit, the 3 percent credit will be calculated using the same bid amounts and basis (net or gross bids) as in the calculation of the payment in paragraph (g)(1) of this section. Thus, for example, if gross bids are used to calculate the payment in paragraph (g)(1), the 3 percent will be applied to the gross amount of the subsequent winning bid, or the gross amount of the defaulting bid, whichever is less.

* * * * *

4. Section 1.2105 is revised to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) Submission of Short-Form Application (FCC Form 175). In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate upfront payment set forth by Public Notice. Beginning January 1, 1999, all short-form applications must be filed electronically.

(1) All short-form applications will be due:

(i) On the date(s) specified by Public Notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (see, e.g., 47 CFR 22.902), on a date specified by Public Notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The short-form application must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii)(A) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all general partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons; and

(B) Applicant ownership information, as set forth in § 1.2112.

- (iii) The identity of the person(s) authorized to make or withdraw a bid;
- (iv) If the applicant applies as a designated entity pursuant to § 1.2110, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110.
- (v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of Section 310 is pending;
- (vi) Certification that the applicant is in compliance with the foreign ownership provisions of Section 310 of the Communications Act of 1934, as amended;
- (vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;
- (viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure.
- (ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

Note to paragraph (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) Modification and Dismissal of Short-Form Application (FCC Form 175). (1) Any short-form application (FCC Form 175) that does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. During the resubmission period for curing defects, a short-form application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, a short-form application may be amended or modified to make minor changes or correct minor errors in the application. Major amendments cannot be made to a short-form application after the initial filing deadline. Major amendments include changes in ownership of the applicant that would constitute an assignment or transfer of control, changes in an applicant's size which would affect eligibility for designated entity provisions, and changes in the license

service areas identified on the short-form application on which the applicant intends to bid. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by Public Notice will have their applications dismissed with no opportunity for resubmission.

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do no result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant; or

(iii) When an applicant has withdrawn from the auction, is no longer placing bids and has no further eligibility, a holder of a non-controlling, attributable interest in such an applicant may obtain an ownership interest in or enter into a consortium with another applicant for a license in the same geographic service area, provided that the attributable interest holder certifies to the Commission that it did not communicate with the new applicant prior to the date that the original applicant withdrew from the auction.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term "applicant" shall include all controlling interests in the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) the term "bids or bidding strategies" shall include capital calls or requests for additional funds in support of bids or bidding strategies.

EXAMPLE: Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either (1) that it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or (2) that it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

5. Section 1.2107 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(b) Unless otherwise specified by Public Notice, within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payments with their bids.) Unless otherwise specified by Public Notice, this down payment must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license or authorization, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest on any down payment will be paid to the bidders.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application

filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in § 1.2104.

* * * * *

6. Section 1.2108 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.2108 Procedures for filing petitions to deny against long-form applications.

* * * * *

(b) Within a period specified by Public Notice, and after the Commission by public notice announces that long-form applications have been accepted for filing, petitions to deny such applications may be filed. In all cases, the period for filing petitions to deny shall be no shorter than five (5) days. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be at least five (5) days from the filing date for petitions to deny, and the time for filing replies shall be at least five (5) days from the filing date for oppositions. The Commission may grant a license based on any long-form application that has been accepted for filing. The Commission shall in no case grant licenses earlier than seven (7) days following issuance of a public notice announcing long-form applications have been accepted for filing.

* * * * *

7. Section 1.2109 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified by Public Notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a Public Notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount

due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2). In such event, the Commission, at its discretion, may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 1.2107(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.

* * * * *

8. Section 1.2110 is revised to read as follows:

§ 1.2110 Designated entities.

(b) ***

(3) Rural telephone companies. A rural telephone company is any local exchange carrier operating entity to the extent that such entity --

(i) provides common carrier service to any local exchange carrier study area that does not include either

(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(ii) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(iv) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(4) Affiliate.

(i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity--

- (A) directly or indirectly controls or has the power to control the applicant, or
- (B) is directly or indirectly controlled by the applicant, or
- (C) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) has an "identity of interest" with the applicant.

(ii) Nature of control in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family

or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step- father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) Affiliation through stock ownership.

(A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had come owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(vi) Affiliation under voting trusts.

(A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or

where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) Affiliation under joint venture arrangements.

(A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a point venture.

(B) The parties to a joint venture are considered to be affiliated with each other. Nothing in this subsection shall be construed to define a small business consortium, for purposes of determining status as a designated entity, as a joint venture under attribution standards provided in this section.

(xi) Exclusion from affiliation coverage. For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliate entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. §2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit partitioning of service areas in particular services for eligible designated entities.

(e) Bidding credits.

(1) The Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify

the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(2) Size of bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use the following bidding credits corresponding to their respective average gross revenues for the preceding 3 years:

(i) Businesses with average gross revenues for the preceding years 3 years not exceeding \$3 million are eligible for bidding credits of 35 percent;

(ii) Businesses with average gross revenues for the preceding years 3 years not exceeding \$15 million are eligible for bidding credits of 25 percent; and

(iii) Businesses with average gross revenues for the preceding years 3 years not exceeding \$40 million are eligible for bidding credits of 15 percent.

(f) Installment payments. The Commission may permit small businesses (including small businesses owned by women, minorities, or rural telephone companies that qualify as small businesses) and other entities determined to be eligible on a service-specific basis, which are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified by Public Notice, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within ten (10) days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay a default payment pursuant to § 1.2104(g)(2).

(2) Within ten (10) days of the conditional grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay default payments pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan and that it must execute a promissory note and security agreement as a condition of the installment payment plan. Unless other terms are specified in the rules of particular services, such plans will:

(i) impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) allow installment payments for the full license term;

(iii) begin with interest-only payments for the first two years; and

(iv) amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) Any licensee that fails to submit payment on an installment obligation will automatically have an additional ninety (90) days in which to submit its required payment without being considered delinquent. Any licensee making its required payment during this period will be assessed a late payment fee equal to five percent (5%) of the amount of the

past due payment. Late fees assessed under this paragraph will accrue on the next business day following the payment due date. Payments made at the close of any grace period will first be applied to satisfy any lender advances as required under each licensee's "Note and Security Agreement." Afterwards, payments will be applied in the following order: late charges, interest charges, principal payments.

(ii) If any licensee fails to make the required payment at the close of the 90-day period set forth in subsection (i) above, the licensee will automatically be provided with a subsequent 90-day grace period. Any licensee making a required payment during this subsequent period will be assessed a late payment fee equal to ten percent (10%) of the amount of the past due payment. Licensees shall not be required to submit any form of request in order to take advantage of the initial 90-day non-delinquency period and subsequent automatic 90-day grace period. All licensees that avail themselves of the automatic grace period must pay the required late fee(s), all interest accrued during the non-delinquency and grace periods, and the appropriate scheduled payment with the first payment made following the conclusion of the grace period.

(iii) If an eligible entity making installment payments is more than one hundred and eighty (180) days delinquent in any payment, it shall be in default.

(iv) Any eligible entity that submits an installment payment after the due date but fails to pay any late fee, interest or principal at the close of the 90-day non-delinquency period and subsequent automatic grace period will be declared in default, its license will automatically cancel, and will be subject to debt collection procedures.

(g) The Commission may establish different upfront payment requirements for categories of designated entities in competitive bidding rules of particular auctionable services.

(h) The Commission may offer designated entities a combination of the available preferences or additional preferences.

(i) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that effect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. Such information must be maintained at the licensees' facilities or by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(j) The Commission may, on a service-specific basis, permit consortia, each member of which individually meets the eligibility requirements, to qualify for any designated entity provisions.

(k) The Commission may, on a service-specific basis, permit publicly-traded companies that are owned by members of minority groups or women to qualify for any designated entity provisions.

(l) Audits.

(1) Applicants and licensees claiming eligibility under this section shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding FCC-licensed service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(m) Gross Revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

9. Section 1.2111 is amended by revising paragraphs (c) and (d) and adding paragraph (e) to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

* * * * *

(c) Unjust Enrichment Payment: installment financing.

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full